

ADVISORY OPINION NO. 2000-30

Issued On November 2, 2000 By The

COP

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Board of Education Member** asks whether it is a violation for the Board to contract for the use of a swimming pool owned by the private college by which he is employed.

FACTS RELIED UPON BY THE COMMISSION

The Board is considering establishing a high school swim team. The only indoor pool within 25 miles, the only pool which could reasonably be utilized by the team, is owned by a private college which employs a member of the Board. The college would charge the Board a daily fee of from \$10 to \$25 depending on the number of students using the pool.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ...

WV Code 61-10-15 states in part that ... It shall be unlawful for any member ... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ...

ADVISORY OPINION

Both the Ethics Act and WV Code 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale over which their public position gives them control.

The Ethics Act's prohibition against private interests in public contracts, WV Code 6B-2-5(d), applies to public servants, their spouses and businesses with which they or their spouses have an ownership interest of more than 10%. The Ethics Act's prohibition does not apply to a business by which a public servant is employed, unless the employee or the employee's spouse also has an ownership interest in excess of 10%.

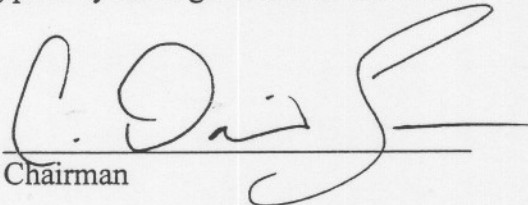
Having no ownership interest, the Member's employment is not sufficient to trigger the Ethics Act prohibition against a contract between the Board and the college. However, his employment is sufficient to require that he be recused from the Board's discussion and vote on the Board's contracts with his employer.

Unlike the Ethics Act, WV Code 61-10-15 does apply to businesses by which public servants are employed, even if they have no ownership interest in the business which employs them. In most situations, it would be a violation for a school board to contract with the employer of one of its members.

WV Code 61-10-15 prohibits public servants from having personal interests directly, or indirectly through their employers, in public contracts over which they have "voice, influence or control". In this case the Board can not be said to exercise control over the selection of a venue for the high school's swim team, since there is no acceptable alternative to the college pool.

The WV Supreme Court of Appeals dealt with a similar situation in *Dials v. Blair*, 111 S.E.2d 17 (1959) where a county school system purchased water from a company in which a board member had an ownership interest. The Court ruled that it was not a violation of WV Code 61-10-15 for a county board of education to purchase water from the company where water service could not be obtained from any source other than water companies in which a member of the board had an ownership interest.

The Commission rules that it would not be a violation of WV Code 61-10-15 for the Board to contract with the college for the use of its swimming pool by the high school swim team.


Chairman